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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,947	02/24/2005	Kenji Yasuda	TOYA141.001APC	2270

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EXAMINER

HENRY, MICHAEL C

ART UNIT	PAPER NUMBER
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1623

NOTIFICATION DATE	DELIVERY MODE
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03/06/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Notice of Non-Responsive Amendment

The following office action is a responsive to the Amendment filed, 11/29/07.

The amendment filed 11/29/07 affects the application 10/521,947 as follows:

1. Claims 1-6 have been amended. New Claims 7-12 have been added.
2. The responsive to applicants' arguments is contained herein below.
3. Claims 1-12 are pending in application

Newly submitted and amended claims 1-12 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 1 recites, "A method for promoting health in a subject comprising selectively proliferating *Lactobacillus casei* subsp. *casei* in the subject, comprising a step of administering a composition comprising a dextran to the subject." However, claims drawn to a method was not originally examined, is a different or distinct invention which pertains to said method for promoting health in a subject and which would involve a different and burdensome search.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-12 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Note that a reference to the composition herein would not necessarily be a reference to the method of using herein under 35 USC 103. The composition and method herein have separate consideration as to patentability.

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The application currently contains no pending claims directed to the claimed composition previously. Therefore, the amendment is considered non-responsive to the previous Office Action.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8.30am-5pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Henry

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/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623
March 3, 2008.